

1 A I believe that I did.

2 Q Okay. Why did you do that?

3 A Because it was myself that was having what you
4 might say a radio man's disagreement with another radio man,
5 Mr. Doering. Mr. Doering had played a number of dirty
6 tricks, and I was in a bit of a disagreement with the man.

7 Q Okay. Mr. Kay, was there a time when you filed an
8 application with the Commission to assign the license to
9 WNXR890 from Mr. Cordaro to yourself?

10 A I believe so.

11 Q Can you turn to WTB Exhibit 321?

12 A Yes.

13 Q Do you recognize that as a copy of the assignment
14 application that was filed?

15 A That looks like it.

16 Q Okay. At the bottom of page 1, is that your
17 signature?

18 A Yes, it is.

19 Q Okay. The date next to your signature is 4-24-94?

20 A That's what it says.

21 Q Okay. Turn to page 3. Do you recognize this as
22 the form by which Mr. Cordaro authorized the assignment of
23 the license over to you?

24 A Yes, it is.

25 Q Okay. Do you see the date next to his signature?

1 A Yes, I do.

2 Q 11-21-92?

3 A That could be a 20-92, but it's November of 1992.

4 Q Okay. Turn to page 4. Is it correct that Barbara
5 Ashauer notarized --

6 A That's what that is. It's a notary.

7 Q So it appears that Mr. Cordaro actually signed
8 this document on November 21, 1994?

9 A Yes. That's got to be 21 then on the first one.
10 It looked like it could have been a zero. It must have been
11 21. All right.

12 Q Do you know why, if Mr. Cordaro signed this
13 assignment in November of 1992, the assignment application
14 was not submitted until some point after April 24, 1994?

15 A I remember I told you I thought I had
16 procrastinated on it. I actually think it got lost in the
17 shuffle because when I looked back on this I discovered the
18 controls and mobiles hadn't been added to his station in
19 1992 because I had asked for assignment of it and would have
20 added it with my applications, so it basically got lost in
21 the shuffle and didn't get -- did not get done.

22 Q Okay. Do you recall discussing about April of
23 1994 with Mr. Cordaro the fact that you were going to be
24 filing the assignment application around that time?

25 A I'm sure I did. I don't have a recollection of

1 it, but I'm sure I would have.

2 Q Mr. Kay, please turn to page 5. Is that your
3 signature on that page?

4 A Yes, it is.

5 Q Do you see that you are certifying the station in
6 question was in operation as of the date of that
7 certification?

8 A Yes.

9 Q Who was operating the station at that time?

10 A The station would have been licensed to Mr.
11 Cordaro, and we would have been on management under a verbal
12 agreement. You'll have to define what you mean by
13 operating.

14 Q Turn to Exhibit 324, Mr. Kay. Is that a copy of
15 the check by which you paid the \$100 option fee to Mr.
16 Cordaro referred to in the written management agreement?

17 A Yes.

18 Q The date on that check is December 30, 1994?

19 A Correct.

20 Q At this time, you had already filed the assignment
21 application, correct?

22 A Correct, and the Commission was holding it.

23 Q I am sorry? I did not hear the last part of your
24 answer.

25 A And the Commission was holding it like they did

1 every other application.

2 Q When you filed the assignment application in 1994,
3 did you have any agreement with Mr. Cordaro that you would
4 pay him any amount of money or other compensation for
5 assigning the license over to you?

6 A I don't recall if there was an agreement for
7 money. I know he was still using the station with his
8 radios and whatever other business he chose to go in.

9 I don't know that there was a money purchase price
10 placed on it, that the management contract put a purchase
11 price on it.

12 Q Mr. Kay, are you familiar with an individual named
13 Kevin Hessman?

14 A Yes.

15 Q Was there a time when Kevin Hessman was employed
16 by you?

17 A Kevin came to work for me somewhere in the first
18 part of 1990 and was terminated I think it was October of
19 1993, so he worked for me for three and a half years
20 approximately.

21 Q Okay. What were his duties during the time he was
22 employed by you?

23 A He primarily did shipping/receiving, service
24 writing. He was an all around gopher. If we needed
25 something picked up, delivered, we'd use him. If we needed

1 someone to help carry things, we'd use Kevin.

2 Q Okay. Who did Mr. Hessman report to?

3 A Gee. Various people over the term of his
4 employment.

5 Q Okay. Was there a specific title or position he
6 would have reported to?

7 A Well, to a degree he reported to -- basically
8 everybody bossed Kevin around. He would definitely have
9 reported to the service manager. A sales manager would tell
10 him to do things for shipping/receiving. A general manager
11 would. I'd tell him to do things.

12 Basically anybody who had any kind of a title
13 would tell Kevin what to do, including some people that
14 didn't.

15 Q Okay. You mentioned a moment ago that Mr.
16 Hessman's employment was terminated?

17 A Yes.

18 Q Briefly explain the circumstances under which he
19 was terminated.

20 A I found that Mr. Hessman had done something that I
21 couldn't prove he did. He assisted Mr. Jensen, a former
22 employee, by taking a check from Mr. Jensen into my
23 employment, endorsed it with a rubber stamp, a check
24 endorsement stamp, and returned it to Mr. Jensen, which the
25 purpose of this was to attempt to embarrass me rather

1 severely in the Superior Court, State of California, and
2 possibly get me sanctioned.

3 I was very unhappy about that when I found out
4 what the two of them had tried to pull off. I couldn't
5 prove Mr. Hessman did it, though I knew he did it, so to get
6 rid of a disloyal employee Mr. Hessman had gotten very
7 obnoxious and sarcastic with a number of my employees,
8 including what was borderline sexual harassment, as well as
9 harassing one of my employees who was Hispanic. Mr. Hessman
10 -- we wrote him up. We documented his actions, gave him
11 warning notices, and I fired him.

12 He very nicely gave me a justifiable firing by his
13 actions, so he was fired both for what he did that I could
14 not prove and for something he conveniently gave me that I
15 could prove and did prove, and I fired him.

16 Q Mr. Kay, please direct your attention to WTB
17 Exhibit 308.

18 JUDGE CHACHKIN: What number?

19 MR. SCHAUBLE: 308.

20 JUDGE CHACHKIN: 308

21 BY MR. SCHAUBLE:

22 Q Do you recognize this as an end user license?

23 A Yes, it is.

24 Q The licensee is Kevin Hessman, d/b/a Hessman
25 Security?

1 A That's what it reads.

2 Q Okay. Looking toward the bottom, this end user
3 license was loaded on SMR station WXNS450?

4 A That's correct.

5 Q Was that a station licensed to you?

6 A I believe so.

7 Q Do you know the circumstances under which Mr.
8 Hessman came to apply for this license?

9 A My recollection is that in 1992, Mr. Hessman,
10 together with Mr. Jensen and other persons unknown to me,
11 volunteered in some fashion or were engaging in some type of
12 a security type enterprise, which I understand from Mr.
13 Hessman's testimony involved some type of volunteer work for
14 the Los Angeles Police Department. That's what he said. I
15 do not know that from my personal knowledge.

16 What I do know or remember is they asked me if
17 they could use company radios, company frequencies,
18 repeaters, to support their operation, to which I answered
19 yes. I regularly donate rental of radios, use of repeaters,
20 for all types of both charity work, donation work, volunteer
21 work. I do that on a very regular basis. If my employees
22 want to use a bunch of radios for something, I let them do
23 it. It's standard practice.

24 I was approached. I don't remember whether it was
25 Kevin or Roy Jensen, that is, that approached me on it that

1 they wanted to do this and needed a couple channels, and
2 they'd be able to cover the Los Angeles area, the valley and
3 Los Angeles. I did not know the scope of their operations.

4 My recollection is two channels were chosen, 800
5 megahertz channels. Codes were established for them, and
6 licenses were filed to allow them to use my stations. The
7 applications were prepared. Mr. Hessman signed them, and
8 they were filed with the Commission, thus allowing him to
9 use our company radios.

10 I understand from others, though I didn't
11 personally see it, that he used radios. I do know he had an
12 800 megahertz radio in his vehicle. I know Jensen did at
13 this period of time. They also had possession of portable
14 units.

15 I don't know everything that they did on them
16 because I wasn't in the loop. I had approved it, prepared
17 the licenses and let them go for it. I understand that they
18 did use a multitude of radios for whatever they were doing.
19 I did not go out with them, so I have bits and pieces of
20 what they did.

21 Q At the time you were approached concerning the use
22 of the radios, did you know whether they were going to be
23 using them in connection with a charitable function or some
24 sort of outside business?

25 MR. KELLER: Objection. Relevance.

1 JUDGE CHACHKIN: What is the relevance?

2 MR. SCHAUBLE: Your Honor, it relates to what Mr.
3 Kay knew about the use of his radios in applications he was
4 involved in preparing.

5 JUDGE CHACHKIN: I will permit it.

6 THE WITNESS: I don't recall now exactly what they
7 told me, if they told me, beyond the fact that they needed a
8 couple good channels to go do something with involving
9 security.

10 I believe I learned much later in the course of
11 this proceeding in speaking with people when a question came
12 up on this exactly what they used them for. I do not know
13 if I knew then exactly what it was. I know he was doing
14 some type of security work either as a contract security
15 guard.

16 I believe I was told later it was a donation
17 thing, so I wrote it up as a business when I prepared the
18 applications. I'm not 100 percent sure what I knew then
19 when I did the applications.

20 Do we have the applications so we can take a look
21 and see how I prepared them?

22 MR. SCHAUBLE: We do not.

23 THE WITNESS: It's kind of hard for me to answer
24 without seeing them.

25 BY MR. SCHAUBLE:

1 Q Let me ask you, Mr. Kay. At this time, and I am
2 talking the middle of 1992, if one of your employees wanted
3 to use a radio in connection with the performance of his
4 business, was that employee required to have an end user
5 license in his own name?

6 A To be restricted here to the FCC rules, an
7 employee of mine would necessarily have to have a license if
8 he was to use one of my stations other than in conjunction
9 with my direct employment. That is my understanding of the
10 rules that if he operated under my company license, he had
11 to be doing my company's business.

12 I couldn't have Mr. Hessman go play rent-a-cop, a
13 security guard, whatever he wanted to do, underneath my
14 company's licenses because he wasn't doing my business. It
15 could also open up a significant liability to me should
16 something happen. When he's out playing rent-a-cop, if
17 somebody got hurt or something conceivably a finger could
18 get pointed at me, especially if for some reason a radio
19 didn't function.

20 It was my understanding that every end user, which
21 would include my employees who are operating themselves for
22 their own personal use or for in association with another
23 company or as a volunteer, that were not involved directly
24 in my company's business, they would require their own
25 licenses.

1 Q Okay, Mr. Kay. Please turn to WTB Exhibit 309.

2 MR. KELLER: I am sorry. Which exhibit?

3 MR. SCHAUBLE: 309

4 MR. KELLER: Thank you.

5 THE WITNESS: Yes.

6 BY MR. SCHAUBLE:

7 Q Is it correct that this is another end user
8 license issued in the name of Kevin Hessman, d/b/a Hessman
9 Security?

10 A Right. I told you we got him two licenses for two
11 different repeaters. I believe one was at Lukens, and one
12 was at Santiago. You're looking at the two of them.
13 Between the two of them, they covered the whole area.

14 MR. SCHAUBLE: Your Honor, can we go off the
15 record?

16 JUDGE CHACHKIN: All right. We will go off the
17 record.

18 (Discussion held off the record.)

19 BY MR. SCHAUBLE:

20 Q Mr. Kay, please direct your attention to WTB
21 Exhibit No. 343.

22 A 343. All right.

23 Q Mr. Kay, do you recognize that this is a pleading
24 filed on your behalf in this proceeding?

25 A I believe this was a -- I think we looked at this

1 yesterday or the day before. It's a document prepared by
2 counsel, Brown and Schwaninger, on my behalf.

3 Q Okay. Turn to page 23 of the exhibit.

4 A Yes.

5 Q The affidavit. Is that your signature?

6 A I believe we did this yesterday or the day before.
7 Yes, it is.

8 Q Okay. Mr. Kay, turn to page 4 of the exhibit.

9 A Okay.

10 Q Okay. Now, at the time this pleading was filed,
11 did you believe the Commission was under a misapprehension
12 as to what the relationship was between you and Marc Sobel?

13 A They had listed Marc -- some of Marc Sobel's
14 licenses in the hearing designation order as my licenses. I
15 don't know what I particularly thought, but I was surprised
16 that they had Marc's in there.

17 Q Did you believe the Commission was confused in any
18 way about what relationship -- let me ask the question.

19 Did you believe the Commission had some questions
20 about what the relationship was between yourself and Mr.
21 Sobel?

22 A I'm not a mind reader for what the Commission
23 thought or didn't think, sir.

24 Q Okay. Now, it is correct that this paragraph on
25 page 4 makes the representation that you have no interest in

1 any of the licenses or stations held by Marc Sobel, correct?

2 MR. SHAINIS: Objection. The document will speak
3 for itself. I have no idea where he is going.

4 JUDGE CHACHKIN: If he wants to reaffirm it, I
5 will let him reaffirm it.

6 Is that still a correct statement, that this
7 statement was correct at the time it was written?

8 THE WITNESS: It reads, "As shown by the affidavit
9 of Marc Sobel attached, Exhibit 2 hereto, Kay has no
10 interest in any of the licenses or stations held by Marc
11 Sobel."

12 I think what it says -- I can't read what my
13 lawyer had in his mind as he wrote this. I believe what he
14 was saying is James Kay does not have a legal interest, an
15 ownership interest, in the licenses held by Marc Sobel.

16 BY MR. SCHAUBLE:

17 Q Okay. Now, it is correct that you affirmed that
18 what was in this pleading is true and correct?

19 A I scanned through this document. I saw no obvious
20 errors. I executed the affidavit that was supplied to me by
21 my counsel.

22 Q Okay. In connection with reading the pleading,
23 did you read the affidavit of Marc Sobel that was attached?

24 A I believe that I did.

25 Q Okay. In fact, did you present that affidavit to

1 Marc Sobel for his signature?

2 A Marc Sobel -- I received this in from my counsel.
3 I called Marc Sobel and told him there was an affidavit. He
4 came to my shop. I handed it to him.

5 He gave it a quick glance, asked me one or two
6 questions, which I answered as best as I knew. He signed
7 it, and my affidavit and his were sent back to my counsel, I
8 believe, by fax and by mail. I think it took all of 15 or
9 20 seconds or 30 seconds for Marc to sign his affidavit.

10 Q Now, you knew at this time that you had a
11 management agreement with Marc Sobel with respect to these
12 stations, correct?

13 A Yes, I did.

14 Q And it is correct that you knew at this time that
15 you owned the equipment that was being used with respect to
16 those stations, correct?

17 A Yes, I did.

18 Q You knew it was your customers who were being
19 placed on those stations, correct?

20 A Yes, I did.

21 Q And you knew that you or your company was the one
22 who was billing customers for those stations, correct?

23 A Yes, I did.

24 Q You knew that at that time, you were receiving all
25 the revenue that these stations were generating, correct?

1 A Yes, I did.

2 Q And he knew at this time that you had the option
3 to purchase any of these stations for \$500 each, correct?

4 A That's correct. A future option.

5 Q Okay. Is it correct that you believe it was your
6 understanding at that time that a direct financial stake in
7 something was an interest in something?

8 MR. SHAINIS: Objection. What do you mean by a
9 direct financial stake? Define it.

10 JUDGE CHACHKIN: What is a direct financial stake?

11 MR. SCHAUBLE: Your Honor, it is essentially
12 parroting the witness' own words from his testimony.

13 JUDGE CHACHKIN: Did he use the word direct
14 financial stake?

15 MR. SCHAUBLE: Yes. Yes, he did.

16 JUDGE CHACHKIN: He used the word?

17 MR. SCHAUBLE: Yes.

18 MR. SHAINIS: Where?

19 JUDGE CHACHKIN: Where did he use the word direct
20 financial stake? If he did, we will find out what he means
21 by that. I do not know what it means.

22 MR. SCHAUBLE: It is Exhibit 329, Your Honor.

23 JUDGE CHACHKIN: What page?

24 MR. SCHAUBLE: It begins at the question on page
25 371, Lines 18 through 23.

1 JUDGE CHACHKIN: What is this?

2 MR. SCHAUBLE: This is the hearing transcript.

3 JUDGE CHACHKIN: I understand. What page?

4 MR. SCHAUBLE: 371, Your Honor.

5 JUDGE CHACHKIN: 371.

6 MR. SCHAUBLE: We can go back if necessary, Your
7 Honor. This goes back to deposition testimony in the Sobel
8 proceeding, too.

9 JUDGE CHACHKIN: No, no.

10 MR. SHAINIS: What line are you referring to,
11 counsel?

12 MR. SCHAUBLE: Lines 18 through 23.

13 JUDGE CHACHKIN: The question was asked:

14 "Q Is it not true you have a direct financial
15 stake in the management agreement stations?"

16 The answer was:

17 "A How do you mean? I mean, I'd suffer
18 financial loss if they went away. If Marc Sobel sold them,
19 I'd have to lose some of my customers."

20 JUDGE CHACHKIN: So where did he say anything? It
21 was said by you.

22 MR. SHAINIS: Also on page 372, Your Honor, just
23 in fairness --

24 JUDGE CHACHKIN: I know that Judge Frysiak --

25 MR. SHAINIS: Right.

1 JUDGE CHACHKIN: -- asked do you have a financial
2 stake in those stations, and the witness said not in the
3 licenses.

4 MR. SCHAUBLE: Your Honor, I would also point out
5 that the representation made to the Commission refers not
6 only to the licenses, but also to the stations.

7 MR. KELLER: That is also an interpretation of --

8 JUDGE CHACHKIN: He said not in the licenses.

9 MR. SHAINIS: But the Commission only regulates
10 the licenses, counsel. They have no regulatory authority
11 over anything but licenses, unless you know something that I
12 do not know.

13 JUDGE CHACHKIN: If you want to conclude, based on
14 what the witness testified, that that constitutes a direct
15 financial stake, that is a conclusion. That is not a fact.
16 The question is what constitutes the direct financial stake.

17 You have asked the witness a series of questions.
18 Now, if you want to conclude on the basis of that that that
19 is a direct financial stake, fine. You can make that
20 conclusion, but what does it mean?

21 You will have to define the direct financial stake
22 in terms of for this witness to answer the question. What
23 constitutes a direct financial stake? I do not know what it
24 means. It may be a conclusion reached on the basis of a
25 series of facts established, but what does it mean? It is a

1 conclusionary question. In fact, it is a legal question.
2 It is a legal definition.

3 MR. SCHAUBLE: Your Honor, it was definitely the
4 witness' own term.

5 JUDGE CHACHKIN: It was not the witness' term. It
6 was a term used by you and then by Judge Frysiak.

7 MR. SCHAUBLE: Your Honor --

8 JUDGE CHACHKIN: Show me where the witness used
9 that term.

10 MR. SHAINIS: What are you referring to now?

11 MR. SCHAUBLE: Mr. Kay's deposition in the Marc
12 Sobel proceeding.

13 MR. KELLER: I just want to caution counsel. I do
14 not know that I have a copy of the deposition.

15 MR. SCHAUBLE: I will be glad to show it to you.

16 MR. KELLER: I understand that. That is not my
17 concern.

18 My concern is that we are getting into an area
19 here where the questioning on this area in the deposition
20 involved discussions between Mr. Kay and legal counsel, and
21 there was a stipulation between Kay counsel, Sobel counsel
22 and Bureau counsel that that questioning could continue at
23 deposition on the understanding that it would not be relied
24 on as a waiver of attorney/client privilege.

25 I have no problem with the information being

1 discussed on the record here under the same understanding,
2 but this is not going to constitute a waiver of attorney/
3 client privileges to any other discussions about this or any
4 other matter.

5 JUDGE CHACHKIN: Where did the witness use the
6 term direct financial stake?

7 MR. SCHAUBLE: Your Honor, may I show it to
8 counsel?

9 JUDGE CHACHKIN: Yes.

10 MR. KNOWLES-KELLETT: I think before we present it
11 to the Judge, we ought to deal with Mr. Keller's objection.
12 I think that we are willing to do that stipulation.

13 MR. KELLER: Nothing that was stated at the
14 deposition concerns me. I just do not want anything that
15 comes out now to be considered that there was a waiver in
16 there for other stuff.

17 MR. KNOWLES-KELLETT: Right. That is correct.

18 MR. SCHAUBLE: It is here. It starts here.

19 (Pause.)

20 MR. KNOWLES-KELLETT: I am saying I think that
21 that is additional information that without regard to
22 privilege I think is pertinent to the discussion here and
23 should be coming forth, should come out.

24 In other words, this was not something he made up
25 in his own mind. It was something he got from counsel.

1 JUDGE CHACHKIN: What is this?

2 MR. SCHAUBLE: Your Honor, this is Mr. Kay's
3 deposition in the Marc Sobel proceeding. The reference is
4 here. You might want to start at the end of 56 in order to
5 get the context.

6 (Pause.)

7 JUDGE CHACHKIN: As I read this, the witness told
8 his attorney he did not have a direct financial stake.

9 MR. SCHAUBLE: Your Honor, I do not think there is
10 anything in there concerning --

11 JUDGE CHACHKIN: Is that not what he says?

12 MR. SCHAUBLE: I think what he is saying is a
13 direct financial stake is an interest.

14 JUDGE CHACHKIN: He did not say that. He just
15 said I told him to the best of my knowledge. He asked me
16 what the interest exactly meant, what was meant. He
17 answered that question yes.

18 Did you give him an answer? I told him to the
19 best of my knowledge, as it had been explained to me, it
20 referred to ownership as in a partnership or ownership of
21 stock and having a direct financial stake in something,
22 being an owner or a stockholder, a direct party to
23 something, so it seems clear that the witness understood
24 financial stake to be tantamount to being an owner, having a
25 stock interest or a partnership interest.

1 How is that inconsistent with anything?

2 MR. SCHAUBLE: Well, Your Honor --

3 JUDGE CHACHKIN: Now, you have a different view.

4 You have a different view apparently. You think whether he
5 is an owner, has an ownership interest or a partnership
6 interest --

7 MR. SCHAUBLE: Your Honor, there is not a
8 reference and there is not a limitation to ownership
9 interest. Another thing that he --

10 JUDGE CHACHKIN: Well --

11 MR. SCHAUBLE: Your Honor, may I go ahead?

12 JUDGE CHACHKIN: Yes. You can have this back, but
13 what is your question? I do not understand. What are you
14 asking? What are you asking?

15 BY MR. SCHAUBLE:

16 Q Mr. Kay, is it not a fact that you had an interest
17 in the stations?

18 JUDGE CHACHKIN: What do you mean by interest in
19 the stations?

20 MR. SCHAUBLE: Your Honor, that --

21 JUDGE CHACHKIN: Did he buy an interest in the
22 station? That is a legal conclusion. What do you mean by
23 an interest in the station?

24 MR. SCHAUBLE: Your Honor, that is a term that the
25 witness himself adopted.

1 JUDGE CHACHKIN: Well, I am asking you.

2 MR. SCHAUBLE: He certified that it was true and
3 correct.

4 JUDGE CHACHKIN: He said he did not have an
5 interest.

6 MR. SHAINIS: He testified as to what his
7 understanding of the word interest was. He testified. It
8 turns on what he thought interest meant.

9 MR. SCHAUBLE: Your Honor, it is our position that
10 the witness' own interpretation of the term shows that he
11 did have an interest in the stations.

12 MR. KELLER: Your Honor, I absolutely disagree.

13 JUDGE CHACHKIN: If you want to ask the question
14 of the witness what he means by the term interest, go ahead.

15 MR. SCHAUBLE: Your Honor, it is already in the
16 transcript. I do not want to be repetitive.

17 JUDGE CHACHKIN: Where in the transcript did he
18 define interest?

19 MR. SHAINIS: What transcript are you referring
20 to?

21 JUDGE CHACHKIN: Did he define interest? He said
22 specifically he did not have an interest, did he not?

23 MR. SCHAUBLE: Your Honor, we believe under his
24 own definition he did in fact have an interest, and he knew
25 that.

1 MR. SHAINIS: What transcript are you referring
2 to, Mr. Schauble?

3 JUDGE CHACHKIN: What definition are you talking
4 about?

5 MR. SCHAUBLE: Exhibit 329, Your Honor.

6 JUDGE CHACHKIN: Where did he define interest? He
7 defined interest as an ownership interest or a partnership
8 interest.

9 MR. SCHAUBLE: Or a direct financial stake, Your
10 Honor.

11 JUDGE CHACHKIN: Which he defined as akin to a
12 partnership or an ownership interest. He specifically said
13 that. He did not say this was something separate. He
14 referred to ownership as in a partnership or ownership stock
15 as having a direct financial stake in something.

16 Obviously an owner or a partner has a direct
17 financial stake. Is that not true? I mean, if you own a
18 share of stock, you have a direct financial interest in that
19 company, do you not?

20 MR. SCHAUBLE: Yes. If you are also receiving all
21 the revenues from those stations, you have a direct
22 financial stake in those stations.

23 MR. SHAINIS: That is an argument. That is a
24 legal conclusion.

25 JUDGE CHACHKIN: You can argue that that is

1 tantamount to control, but that is not a conclusion you can
2 draw from what he said. He did not agree to that.

3 You can argue that as a legal conclusion based on
4 Inter-Mountain or what have you that this constituted
5 control, even though he did not have any stock interest.
6 That is something you can argue the facts if you want, but
7 he did not agree with you that he had an interest because he
8 said in order to have a financial interest you have to be an
9 owner or a partner. He was not.

10 You are not contending if I enter into an
11 operating agreement whereby he is going to sell time for me
12 and he is going to even handle my books of account that he
13 then has a financial stake, are you, in my company?

14 MR. SCHAUBLE: Well, I think --

15 JUDGE CHACHKIN: Or using my equipment that I have
16 a financial stake in his company?

17 MR. SCHAUBLE: We would argue, Your Honor, that if
18 you have a position under which we are the station and you
19 have a revenue sharing agreement under which --

20 JUDGE CHACHKIN: There is not a revenue sharing
21 agreement here. What there is is first the costs come off
22 the top, and he gets whatever is left.

23 MR. SCHAUBLE: No. The revenues are split 50/50,
24 Your Honor.

25 JUDGE CHACHKIN: Where is the revenue split 50/50?

1 MR. SCHAUBLE: It is in the written agreement,
2 Your Honor.

3 JUDGE CHACHKIN: Where is it in the written
4 agreement?

5 MR. SCHAUBLE: Your Honor, on page 4 of Exhibit
6 339 under Paragraph 6, Compensation for Services. "As
7 compensation for agent services described herein, agent
8 shall be entitled to keep as its sole and exclusive property
9 the first \$600 per calendar month of all gross revenues..."
10 That is the cost.

11 The sentence goes on, "...and for each station all
12 gross revenues received in excess of \$600 in any calendar
13 month shall be divided equally between the parties."

14 JUDGE CHACHKIN: All right.

15 MR. SCHAUBLE: So the first \$600 goes to Mr. Kay,
16 and anything over and above the \$600 is split 50/50.

17 Now, in fact, there is testimony in the record
18 that --

19 MR. KNOWLES-KELLETT: None of those people ever
20 saw any money ever. Mr. Kay got it all.

21 MR. SHAINIS: That is a function, in fairness,
22 because there was nothing above.

23 MR. SCHAUBLE: Well, there was. In Sobel there
24 was, but that is reflected elsewhere in the record.

25 JUDGE CHACHKIN: In any event, we are dealing with

1 the word interest here, and I do not see where the witness
2 has said anything to the contrary that he regards it as a
3 partnership or ownership interest.

4 If you want to argue that you do not have to be a
5 partner or owner and still have an interest, you can.

6 BY MR. SCHAUBLE:

7 Q Mr. Kay, at this time, what was your understanding
8 of the meaning of the term station?

9 A Can you just try the sentence again? Try the
10 question again, please.

11 Q Okay. At the time of the affidavit, what was your
12 understanding of the meaning of the term station?

13 A Well, FCC licenses are titled Radio Station
14 License. I will use the word station interchangeably with
15 the word license.

16 I think of a repeater as a repeater. If you're
17 trying to equate the word station as meaning hardware, I
18 don't use it that way.

19 Q Mr. Kay, please direct your attention back to
20 Exhibit 340, which is the management agreement, under
21 Recitals.

22 A Yes.

23 Q In the first recital in the first Whereas
24 paragraph, is it correct that the term "the station" is
25 defined therein?

1 JUDGE CHACHKIN: What are you referring to now?

2 MR. SCHAUBLE: The first Whereas clause, Your
3 Honor, on the first page of Exhibit 340.

4 JUDGE CHACHKIN: What about it?

5 MR. SCHAUBLE: I am asking if the term "the
6 station" is defined in that clause.

7 MR. SHAINIS: That is not a definition. It is a
8 parenthetical summation of the preceding just to make for
9 reference purposes later on in the document. It is not a
10 defined term.

11 JUDGE CHACHKIN: In fact, stations is defined as
12 all licenses for radio facilities.

13 MR. KELLER: Your Honor, I would --

14 MR. SCHAUBLE: Your Honor, is it not correct that
15 the term stations is defined in terms of facilities, as
16 opposed to licenses?

17 MR. KELLER: Your Honor, I would represent that in
18 my experience with communications law, the term facilities
19 is also frequently used interchangeably with licenses.

20 MR. SCHAUBLE: Your Honor, is counsel going to
21 testify here?

22 JUDGE CHACHKIN: I do not know what difference it
23 makes. What difference does it make?

24 MR. SCHAUBLE: Because it is a very important
25 thing. As Judge Frysiak found, Your Honor, it was not just

1 limited to licenses. It was stations and licenses.

2 JUDGE CHACHKIN: Well, the purpose of a license is
3 to run a station. I do not understand.

4 MR. KNOWLES-KELLETT: That is exactly it, Your
5 Honor. The purpose of the license authorizes you to put up
6 equipment called the station under Part 90. It is just
7 exactly what you said.

8 JUDGE CHACHKIN: But what does that have to do
9 with ownership interest?

10 MR. KNOWLES-KELLETT: Kay says I do not have
11 interest in licenses or stations.

12 JUDGE CHACHKIN: That is right.

13 MR. KNOWLES-KELLETT: On the next page he says I
14 own all of the equipment.

15 JUDGE CHACHKIN: So what? How does that make him
16 an owner of a license?

17 MR. KNOWLES-KELLETT: He owns the station. He
18 does not own the license.

19 JUDGE CHACHKIN: I do not agree. Do you mean you
20 are telling me that if you have a house and it is mortgaged,
21 if someone holds a mortgage, who is the owner of the house?

22 MR. KNOWLES-KELLETT: I am.

23 JUDGE CHACHKIN: You are. Right.

24 MR. KNOWLES-KELLETT: Right.

25 JUDGE CHACHKIN: Suppose you decide to lease some

1 furniture for the house. Are you still the owner?

2 MR. KNOWLES-KELLETT: Your Honor, there was --

3 JUDGE CHACHKIN: Whose furniture is it? Who owns
4 the furniture?

5 MR. KNOWLES-KELLETT: The person who I leased it
6 from.

7 JUDGE CHACHKIN: That is right. So you are
8 telling me he has an interest now? You regard him as having
9 an interest in your home?

10 MR. KNOWLES-KELLETT: That is exactly what he
11 said, Your Honor.

12 JUDGE CHACHKIN: You would regard him as having an
13 interest in your home --

14 MR. KNOWLES-KELLETT: No.

15 JUDGE CHACHKIN: -- because you leased furniture?

16 MR. KNOWLES-KELLETT: No. Your Honor, there
17 was --

18 JUDGE CHACHKIN: Why not?

19 MR. KNOWLES-KELLETT: If you ask me about the
20 furniture, though, who owns it?

21 JUDGE CHACHKIN: The furniture. Right.

22 MR. KNOWLES-KELLETT: If I say I own the house and
23 the furniture --

24 JUDGE CHACHKIN: It is still your station.

25 MR. KNOWLES-KELLETT: No.

1 JUDGE CHACHKIN: We are playing games. I do not
2 regard that as an interest.

3 MR. KNOWLES-KELLETT: But if I --

4 JUDGE CHACHKIN: The fact that someone leases
5 equipment from someone --

6 MR. KNOWLES-KELLETT: Your Honor, there was no
7 lease in this situation.

8 JUDGE CHACHKIN: -- does not give him an interest
9 in the station.

10 MR. KNOWLES-KELLETT: It does not give him an
11 interest in the license, Your Honor. I agree totally with
12 that.

13 JUDGE CHACHKIN: He does not have an interest in
14 the station. He has an interest in that equipment.

15 Now, if you want to say everything in the home
16 that he does not own outright, therefore, gives someone an
17 interest, I do not agree with you. I do not think anybody
18 else would say that constitutes an interest.

19 MR. KNOWLES-KELLETT: Okay. Judge Frysiak did,
20 Your Honor.

21 MR. SHAINIS: But what does that have to do with
22 anything?

23 MR. KNOWLES-KELLETT: Okay. If you would hear me
24 out, Your Honor, the term as used in Part 90, you inspect
25 stations.

1 JUDGE CHACHKIN: Yes.

2 MR. KNOWLES-KELLETT: Okay. They do not go look
3 at your license. In fact, in your station records at your
4 station, you have to keep a license, so you inspect the
5 physical radio equipment, so in Part 90 the term station is
6 very different from the term license. You are required to
7 construct a station after you get a license.

8 JUDGE CHACHKIN: But what about if the individual
9 does not pay for the equipment?

10 MR. KNOWLES-KELLETT: Then it goes back, and his
11 station is not constructed and will not --

12 JUDGE CHACHKIN: No, no, no. I am saying what
13 about if the individual, instead of paying outright for his
14 equipment, decides to lease it and make payments over six
15 years?

16 MR. KNOWLES-KELLETT: If he leases the equipment?

17 JUDGE CHACHKIN: Does the leaseholder have an
18 interest in the station or in the equipment?

19 MR. KNOWLES-KELLETT: The leaseholder owns the
20 station --

21 MR. SHAINIS: No.

22 MR. KNOWLES-KELLETT: -- in that case.

23 JUDGE CHACHKIN: I am talking about --

24 MR. KNOWLES-KELLETT: If he leases the equipment
25 from somebody, pays a management person to put up the

1 equipment and leases the equipment, the other person owns
2 the station.

3 The license holder has made the equipment,
4 constructed the station, because he got somebody to do it
5 for him, but he still does not own the station. The
6 leaseholder owns the station.

7 MR. SHAINIS: And the leaseholder all of a sudden
8 would become the licensee?

9 MR. KNOWLES-KELLETT: No.

10 JUDGE CHACHKIN: Therefore, that constitutes a
11 transfer of control, and the Commission --

12 MR. KNOWLES-KELLETT: No. Your Honor, we are
13 talking about --

14 JUDGE CHACHKIN: Well, he must be an undisclosed
15 principal because he was not the licensee.

16 MR. SHAINIS: Your Honor, you --

17 MR. KNOWLES-KELLETT: Because you are constructing
18 my station with leased equipment? No.

19 MR. SHAINIS: You are not allowed to construct a
20 station with leased equipment is what you are saying?

21 MR. KNOWLES-KELLETT: No, not at all. I did not
22 say that at all. In fact, it is commonplace.

23 MR. SCHAUBLE: Your Honor, interest is a far
24 broader term than control here.

25 MR. KELLER: Your Honor, I want to make a further

1 point. Regardless of how all these fine, intellectual
2 things are sorted out, it could well be that somebody argues
3 that this for legal purposes is or is not an interest or
4 that is or is not an interest. At the end, whoever is right
5 in all this discussion, that is still a legal determination.

6 What is really at issue here is not what the
7 lawyers decide, but what somebody meant as a factual matter
8 when they swore out an affidavit.

9 JUDGE CHACHKIN: That is correct. Whether there
10 was an intent to deceive.

11 MR. KNOWLES-KELLETT: Your Honor, we --

12 JUDGE CHACHKIN: We are dealing with whether you
13 want to argue your legal point and someone else wants to
14 argue a legal point. There is no evidence there that the
15 person intended to deceive by his definition, and that is
16 the issue.

17 MR. KNOWLES-KELLETT: I agree with you totally,
18 Your Honor.

19 JUDGE CHACHKIN: All right. That is something
20 Judge Frysiak did not, in my judgement, conclude whether
21 there was intentional deception.

22 MR. KNOWLES-KELLETT: I think just the opposite,
23 Your Honor. I think he decided that Mark Sobel had tried to
24 pull the wool over our eyes. He sat with Marc Sobel, and at
25 one point he realized that he saw the light come on.

1 JUDGE CHACHKIN: I am not talking about Marc
2 Sobel.

3 MR. KNOWLES-KELLETT: Well, that is what that
4 decision was. You have to decide with respect to Mr. Kay
5 whether he was trying to pull the wool over our eyes.

6 JUDGE CHACHKIN: All right. Whether he intended
7 to deceive.

8 MR. KNOWLES-KELLETT: Right, and I think they
9 could be two entirely separate decisions.

10 JUDGE CHACHKIN: I do not know how Sobel could
11 intend to deceive when they give you the agreement, a
12 marketing agreement.

13 MR. KNOWLES-KELLETT: We did not have this
14 agreement, Your Honor.

15 MR. SCHAUBLE: We did not have the agreement at
16 the time.

17 MR. KNOWLES-KELLETT: We got this agreement three
18 months later.

19 JUDGE CHACHKIN: Well, in any event, let's --

20 MR. KNOWLES-KELLETT: He tried to eliminate it
21 from this proceeding before he ever gave us the management
22 and marketing agreement, which had just been executed. He
23 did not attach it to the pleading. Then in discovery in the
24 spring, and this was filed in January/February. Late in the
25 spring we got the management and marketing agreement.

1 He had previously told us he did not operate any
2 stations licensed to anybody other than himself, and then he
3 tells us that he does not have any interest in Marc Sobel's
4 station, and then the management and marketing agreement
5 come out. That was the thing we had a problem with.

6 JUDGE CHACHKIN: All right. Fine. You have a
7 problem with it. If you have a problem with it, fine.

8 MR. KNOWLES-KELLETT: Well, if you do not, the --

9 JUDGE CHACHKIN: I do not see how this has
10 anything to do with whether he intended to deceive, but you
11 disagree with him about what constitutes an interest.

12 MR. KNOWLES-KELLETT: I get to present what I
13 think was --

14 JUDGE CHACHKIN: Fine. I understand that. You
15 will have to demonstrate to me an intent to deceive, and the
16 mere fact that you disagree with his interpretation by
17 itself does not go to motive or intent to deceive. You are
18 going to have to go more than that.

19 MR. KELLER: I would also point out, Your Honor, a
20 recent Court of Appeals case said that very same thing. The
21 Court of Appeals, in Lutheran Church of Missouri Senate,
22 recently reversed the Commission saying the Commission was
23 in error, defined misrepresentation based on disputed
24 interpretations of the meanings of words that were used in
25 the statement.

1 JUDGE CHACHKIN: Go ahead with your questions.

2 BY MR. SCHAUBLE:

3 Q Mr. Kay, when did you first inform the Commission
4 in any context that you were managing Marc Sobel's stations?

5 A I don't know --

6 Q Okay.

7 A -- that I did per se as you just described. I
8 don't know that I specifically informed them that hey, I'm
9 managing some stations. I know that we submitted the
10 management agreements in answer to discovery.

11 Q Would that be in approximately the spring of 1995?

12 A More likely March, maybe April, you were asking me
13 to.

14 Further on that, I'd have to examine all the
15 answers to interrogatories and the pleadings that went back
16 and forth between the Bureau and my counsel to see when they
17 specifically stated there were management -- they probably
18 did, but I don't know when it was.

19 Q Is it correct that nowhere in WTB Exhibit No. 43
20 did you --

21 MR. KELLER: Objection to the form of the
22 question. WTB 43 is a heavily redacted document.

23 MR. SCHAUBLE: That is fair enough.

24 MR. KELLER: I mean, if you want to ask him
25 whether it was submitted with this pleading, that is a

1 different question.

2 BY MR. SCHAUBLE:

3 Q Is it correct that a copy of the management
4 agreement was not submitted with WTB Exhibit 343?

5 MR. KELLER: The same objection.

6 THE WITNESS: To the best of my knowledge, it
7 wasn't. My lawyers prepared the whole thing. They said
8 that's it. They prepared it. I don't know.

9 MR. SCHAUBLE: Your Honor, could we take a break
10 at this time? I am just about done.

11 JUDGE CHACHKIN: All right. We will take a five
12 minute break.

13 (Whereupon, a short recess was taken.)

14 JUDGE CHACHKIN: Let's go back on the record.

15 MR. SCHAUBLE: Thank you, Your Honor. Thank you,
16 Mr. Kay. No further questions.

17 JUDGE CHACHKIN: Any cross-examination?

18 MR. SHAINIS: Your Honor, the way the procedure is
19 currently established, I would cross-examine Mr. Kay, and
20 then Mr. Kay would come back and we would present our direct
21 case utilizing Mr. Kay.

22 I would like to offer what I think would expedite
23 matters considerably. Rather than cross-examine Mr. Kay at
24 this point, I will not cross-examine him. I would like when
25 I bring him back for direct, however, since I am not

1 cross-examining him now, to be able to lead him on direct
2 examination. It will be limited leading. I will tell you
3 that. I will not overly take advantage of it.

4 JUDGE CHACHKIN: Well, if it is limited. It is a
5 question of the nature of the leading. If you are
6 suggesting answers, obviously I would not permit it.

7 I do not know what you mean by leading. You
8 certainly have a right to some extent to lead the witness in
9 the areas where --

10 MR. SHAINIS: Where he has already testified --

11 JUDGE CHACHKIN: -- he has already testified.
12 Yes.

13 MR. SHAINIS: -- and I needed clarification, I
14 would take limited leading on non-controversial items. For
15 example, if I had Mr. Kay on the stand and I was starting
16 cross-examination right now, I would lead him on matters of
17 background, which really --

18 JUDGE CHACHKIN: That is permissible.

19 MR. SHAINIS: I understand.

20 MR. SCHAUBLE: Your Honor, that would be
21 permissible even in --

22 JUDGE CHACHKIN: Right. I do not have a problem
23 with that.

24 MR. SHAINIS: To give you an example, Mr. Schauble
25 asked you certain questions concerning Exhibit No. blank.

1 Is that correct? He would say yes. Then I may have very
2 limited leading on the exhibit, but more of a summation
3 nature until I get to the questions I need to ask for
4 clarification, which would not be leading.

5 JUDGE CHACHKIN: That would be permissible under
6 any circumstances.

7 MR. SCHAUBLE: Your Honor, I think the only
8 problem would be if Mr. Shainis would attempt to lead, to my
9 understanding, on what would be direct and outside the scope
10 of my direct examination. Other than that, it is
11 preliminary background.

12 JUDGE CHACHKIN: I can assure you, I will not let
13 him do it.

14 MR. SCHAUBLE: Okay.

15 MR. SHAINIS: But I would not be confined with
16 just your direct examination since it would be my direct
17 also?

18 MR. SCHAUBLE: Correct. It would be sort of a
19 hybrid, if I understand what you are saying.

20 MR. SHAINIS: That is correct. That is correct.
21 In other words, unless I mischaracterize testimony, you
22 would not be able to make the objection this goes beyond the
23 scope of the direct.

24 MR. SCHAUBLE: Correct.

25 JUDGE CHACHKIN: If it is relevant to the issues,

1 I will permit it.

2 MR. SHAINIS: Okay. I think what I am suggesting
3 would expedite things considerably because I can then use
4 Mr. Kay also to comment possibly on what you have adduced
5 from other witnesses.

6 JUDGE CHACHKIN: In other words, the idea is to
7 put on Mr. Kay rather than now just dealing with the
8 cross-examination and the questions you put, to have him
9 testify with respect to all the witnesses?

10 MR. SCHAUBLE: Can we discuss that for one minute
11 off the record, Your Honor?

12 MR. SHAINIS: Before we go off the record, there
13 is one other item which Mr. Keller just reminded me of.

14 If Mr. Kay has essentially completed his direct
15 examination by you for your part of the case, I am entitled,
16 I think, to have Mr. Kay present while other witnesses
17 testify.

18 JUDGE CHACHKIN: Yes.

19 MR. KNOWLES-KELLETT: We were not asking that he
20 be sequestered.

21 MR. SHAINIS: Okay.

22 MR. SCHAUBLE: He is the first witness, so he --

23 MR. KELLER: We just wanted to make sure by
24 declaring cross-examination we were not precluding Mr. Kay
25 from being present for your next witness.

1 MR. KNOWLES-KELLETT: You are not.

2 MR. SHAINIS: Okay. All right.

3 JUDGE CHACHKIN: Do you have any objection?

4 MR. SCHAUBLE: Your Honor, can we just discuss
5 that for one minute off? I do not think we are going to,
6 but I just want to double check.

7 MR. SHAINIS: No problem.

8 (Pause.)

9 MR. SHAINIS: Your Honor, Mr. Keller has just come
10 up with another plan of attack, so to speak.

11 Essentially, I would defer Mr. Kay's
12 cross-examination under standard rules of cross-examination
13 until after you had finished your case. I would be limited
14 in my cross to what you have adduced on direct. Then once I
15 finish that, I could then have direct examination of Mr.
16 Kay, and you could have redirect.

17 MR. KELLER: Are we still on the record? The
18 suggestion is he would do his cross. We would stop. If
19 they wanted to redirect, they could. Then we would do our
20 direct examination.

21 JUDGE CHACHKIN: All right. That way it is just a
22 question of delaying the cross-examination of Mr. Kay until
23 all the witnesses have testified. We would have
24 cross-examination at one time, and then you would have
25 redirect.

1 MR. KELLER: And then we would move right into our
2 direct.

3 JUDGE CHACHKIN: Then he would go right into his
4 direct.

5 MR. SCHAUBLE: Frankly, Your Honor, the original
6 suggestion might have been a little more efficient. You
7 know, there are some advantages in terms of efficiency in
8 reducing duplication.

9 MR. KELLER: We assure you, our cross-examination
10 is going to be very limited.

11 MR. SHAINIS: The cross-examination will be
12 limited, number one. Number two, I think it would be much
13 more efficient to do it in one fell swoop than to do it --

14 MR. SCHAUBLE: I am agreeing with you. Is it
15 necessary to have cross and then have us redirect and then
16 have you go on?

17 MR. KELLER: Well, I feel that resolves any
18 dispute about what is cross and, therefore, what is leading
19 and what is the appropriate scope of redirect. There is no
20 question at that point.

21 I mean, if we thought we were going to go on for a
22 half a day with cross-examination I would not suggest it,
23 but I really do not think our cross-examination is going to
24 take more than what, an hour or two at the most?

25 MR. SHAINIS: I would say the cross-examination at

1 this point, if I had to do it right now I would say probably
2 two or two and a half hours. I think if I was able to pare
3 it down, I could probably do it in about an hour to an hour
4 and a half.

5 MR. KNOWLES-KELLETT: That is fine with us, Your
6 Honor. Our only concern would be about not using this
7 afternoon and tomorrow morning, given it is Christmas Eve.
8 If they want to do it this way, we are amenable.

9 JUDGE CHACHKIN: All right. That is the way we
10 will do it. Counsel will conduct cross-examination of Mr.
11 Kay after you conclude your direct case, and then you will
12 have an opportunity to redirect. Mr. Kay will then be put
13 on direct, if that is their wish, and you will be able to
14 cross-examine.

15 MR. SCHAUBLE: That is fine, Your Honor.

16 JUDGE CHACHKIN: All right. That is that. We
17 will be in recess until Monday morning at 9:00 a.m.

18 MR. SHAINIS: What witness will you have at that
19 point?

20 MR. SCHAUBLE: We did not definitely tell Paul
21 there was a change. We said there was a possibility.

22 MR. KNOWLES-KELLETT: We believe it is Paul Oei.
23 The only matter would be, Your Honor, you had concern about
24 doing four witnesses next week.

25 JUDGE CHACHKIN: My concern was that the

1 witnesses, the non-Government witnesses, I mean the
2 non-Government employee witnesses, should not have to come
3 back from California if they come here.

4 MR. KNOWLES-KELLETT: Right. We had scheduled
5 Marc Sobel at the end of the week.

6 JUDGE CHACHKIN: Now, if you are feeling you are
7 not going to get to him, maybe you can put him over to
8 January 11.

9 MR. KELLER: What is the schedule for next week?

10 MR. SCHAUBLE: The way it currently reads is
11 Monday, Paul Oei and Craig Sobel.

12 MR. KELLER: Go ahead.

13 MR. SCHAUBLE: Tuesday, Roy Jensen.

14 MR. KELLER: All right.

15 MR. SCHAUBLE: Wednesday, Carla Pfeifer and Marc
16 Sobel spilling into Thursday, if necessary. Thursday
17 morning, if necessary.

18 JUDGE CHACHKIN: If you feel there is a chance
19 that Marc Sobel might have to come back, I do not think
20 counsel would object if you start him on January 11.

21 Mr. Shainis, Mr. Keller, would you have any
22 problem so that Mr. Sobel does not have to return again? I
23 do not think that would be fair to him. We have him
24 scheduled for December 30. He starts January 11.

25 MR. SCHAUBLE: If it looks like he is not going to

1 make it --

2 MR. KELLER: When are we going to know that?

3 JUDGE CHACHKIN: I think the safest thing is to
4 tell him he does not have to come until January 11.

5 MR. SHAINIS: I do not have a problem with that.

6 MR. KELLER: No problem at all.

7 JUDGE CHACHKIN: We are going to finish quickly,
8 as it looks.

9 MR. SHAINIS: Your Honor, can we have one minute
10 off the record?

11 (Pause.)

12 MR. KELLER: Are we back on the record now?

13 JUDGE CHACHKIN: We have been on the record.

14 MR. KELLER: Are we finished with that now? What
15 did we decide? He is going to go until January?

16 MR. KNOWLES-KELLETT: We are going to do it just
17 to make sure that he does not have to travel --

18 MR. SCHAUBLE: I think we should probably check
19 with his attorney just to make sure he does not have a
20 conflict with that.

21 MR. KNOWLES-KELLETT: That is a good point.

22 JUDGE CHACHKIN: Well, obviously then we will have
23 to squeeze him in next week, but hopefully he will be
24 amenable to coming on the following week. I mean the
25 January 11 week.

1 MR. KELLER: Your Honor, I have one additional
2 item I wanted to bring up. This goes back to the admission
3 session.

4 At the admission session, Your Honor, I made the
5 objection to Bureau Exhibits 294 through 305. These are a
6 series of exhibits relating to some Carla Pfeifer
7 applications.

8 At the time I objected on the grounds that the
9 material was so old, going back more than ten years in some
10 cases, anywhere from ten to nine, eight years, something
11 like that, and I had relied on and referenced you to
12 American Mobilphone, Inc., a case that is reported at 10 FCC
13 Record 12297.

14 You overruled the objection. First let me read
15 the relevant paragraph.

16 MR. SCHAUBLE: Your Honor, I object to this. I
17 mean, we have had the admission session already. Are we
18 going to re-argue the admissibility of exhibits?

19 MR. KELLER: I want to just present this. If it
20 cannot be revisited that is fine, but I think there is --

21 JUDGE CHACHKIN: I will let counsel proceed.

22 MR. KELLER: I want to first tell you that here is
23 the operative paragraph in the decision in the American
24 Radio case. "One of the factors in such an analysis is the
25 passage of time since the misconduct." The misconduct

1 alleged by Capital concerned alleged rule violations from
2 1990 and 1991, and this was a decision being given in 1995,
3 five years later.

4 "Because four to five years have passed since
5 those alleged violations and the Private Radio Bureau
6 determined at the time that only a warning was warranted
7 with respect to the 1991 violations, we do not believe that
8 these facts impact adversely on American's qualifications to
9 be a licensee."

10 I think you ruled at the time, Your Honor, the
11 record will reflect, it was on the basis of that part that
12 because the Private Radio Bureau had already addressed this
13 back at the time, therefore you did not feel it was
14 applicable to this situation.

15 Subsequent to that, that is why, Your Honor, I
16 have been asking for a copy of the letter. If you look at
17 Wireless Exhibit No. 299, I believe, it is a letter from
18 Carla Pfeifer back to the FCC in which she says, "Thank you
19 for sending me another copy of your letter." It was
20 obviously a letter from the FCC to her raising some concerns
21 or asking some questions about an application.

22 It is obvious from the context of her response
23 that the inquiry had something to do with her relationship
24 to James Kay. It talks about why she delayed in paying Mr.
25 Kay and his involvement in this application.

1 Subsequent to the receipt of this letter, the
2 Commission obviously processed and granted Ms. Pfeifer's
3 applications, so whatever the concern was back at that time,
4 it was obviously passed on by the Bureau in 1987, more than
5 ten years ago.

6 I would just on that basis renew my objection that
7 these matters relating to Carla Pfeifer applications and
8 licenses going back to 1987, 1988, 1989, 1987 and 1988, are
9 too old to have any real relevance in this proceeding under
10 this precedent and would, therefore, renew the objection to
11 that particular exhibit.

12 JUDGE CHACHKIN: Let me ask you this. The
13 questions you are going to ask about Ms. Pfeifer relate to
14 1987 to 1988?

15 MR. KNOWLES-KELLETT: 1987 to early 1990s, I
16 believe.

17 JUDGE CHACHKIN: To early 1990s?

18 MR. KNOWLES-KELLETT: Early 1990s, yes.

19 MR. KELLER: Even the early 1990s, Your Honor, is
20 still much older than the matter at issue in American
21 Mobilphone, which was only four or five years at that time.

22 JUDGE CHACHKIN: Now, did the Commission in fact
23 pass on the question of --

24 MR. SCHAUBLE: Your Honor, we are looking for the
25 specific letter at issue. We are not certain that it is

1 specifically related to the relationship between Ms. Pfeifer
2 and Mr. Kay.

3 MR. KNOWLES-KELLETT: I think also, Your Honor, if
4 the Commission did pass on it, we did not have all the facts
5 before us at that time.

6 JUDGE CHACHKIN: I do not know. I do not know
7 what the Commission said.

8 MR. KNOWLES-KELLETT: I think it really goes to
9 the weight of --

10 JUDGE CHACHKIN: I think we should have it in the
11 record. I should have before me what the Commission said,
12 if the Commission dealt with this subject of whether she was
13 or apparently Mr. Kay was the real party in interest.

14 MR. KNOWLES-KELLETT: We will put a diligent
15 search on for that record.

16 JUDGE CHACHKIN: You are not aware of the letter?

17 MR. KNOWLES-KELLETT: I was not aware that they
18 had it.

19 MR. SCHAUBLE: We were aware of the letter. We
20 have not seen a copy of the actual letter, Your Honor. We
21 will review our files again to see if we can find it.

22 JUDGE CHACHKIN: Is there any official action of
23 the Commission here?

24 MR. KELLER: Well, all I can go by, Your Honor, is
25 what is in the file. This is old material.

1 I have a letter in which it is obvious from the
2 response she is talking in this response to the FCC in
3 response to a letter that apparently Riley Hollingsworth
4 sent to her because she is addressing the letter back to
5 Riley Hollingsworth saying thank you for sending me another
6 copy of your letter, and she is going on to answer the
7 questions in her letter.

8 Some of the questions respond specifically about
9 Mr. Kay, so I can only assume the letter from Mr.
10 Hollingsworth questioned her about her relationship with Mr.
11 Kay.

12 It does appear from the rest of the exhibits the
13 Commission subsequently processed and granted the
14 application, so they must have been satisfied with her
15 response. Therefore, why do we need to revisit it ten years
16 later?

17 JUDGE CHACHKIN: I do not know. I cannot say
18 until I have the correspondence from Mr. Hollingsworth and
19 Ms. Pfeifer.

20 MR. SHAINIS: We know they granted the
21 application. We know that they expressed some concerns.

22 JUDGE CHACHKIN: I do not know whether the
23 concerns are the same thing as what --

24 MR. KNOWLES-KELLETT: Your Honor, absent the
25 letter, Ms. Pfeifer would be able to testify to it. If it

1 is inappropriate to go to this sanction, Your Honor at that
2 time could strike it from the evidence.

3 JUDGE CHACHKIN: Well, it is a shame to bring her
4 down here if the Commission, Mr. Hollingsworth, has already
5 passed on the activity and ruled that it is all right. I
6 mean, I do not know what the facts are here, frankly.

7 MR. KNOWLES-KELLETT: I am confident, Your Honor,
8 that Mr. Hollingsworth did not have all the facts.

9 JUDGE CHACHKIN: If the Bureau wants to pay the
10 expense of bringing Ms. Pfeifer here to testify, they can do
11 so.

12 Once I examine the letter and what the Commission
13 said, then I will have to make a determination whether or
14 not it should be stricken, but I will let the Bureau go
15 ahead and bring Ms. Pfeifer here and present the evidence.

16 MR. KELLER: Very well, Your Honor. As a
17 taxpayer, I was trying to save some money. That is all.

18 MR. SCHAUBLE: We will work on finding the letter.

19 JUDGE CHACHKIN: Try to find Mr. Hollingsworth's
20 letter or her letter and what the questions are.

21 MR. SHAINIS: Maybe Mr. Hollingsworth has some
22 recollection of what was contained in the letter.

23 JUDGE CHACHKIN: In any event, that is up to you.
24 If you want to bring her here, fine.

25 We will be in recess until 9:00 a.m. on Monday

1 morning.

2 ALL: Thank you, Your Honor.

3 (Whereupon, at 3:00 p.m. the hearing was
4 adjourned, to reconvene at 9:00 a.m. on Monday, December 28,
5 1998.)

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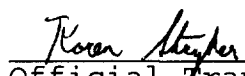


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